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DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506-AA22

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations -- Requirement that Casinos and Card Clubs Report Suspicious Transactions

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule.

SUMMARY: This document contains amendments to the regulations implementing the statute generally referred to as the Bank Secrecy Act. The amendments require casinos and card clubs to report suspicious transactions to the Department of the Treasury. Further, the amendments make certain changes to the requirement that casinos and card clubs maintain Bank Secrecy Act compliance programs. The amendments constitute a further step in the creation of a comprehensive system for the reporting of suspicious transactions by the major categories of financial institutions operating in the United States, as a part of the counter-money laundering program of the Department of the Treasury.

DATES: Effective Date: [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER].

Applicability Date: For suspicious transaction reporting, the applicability date is [INSERT DATE 180 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. See 31 CFR 103.21(g) of the final rule contained in this document.

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SUPPLEMENTARY INFORMATION:

I. Statutory Provisions.

The Bank Secrecy Act ("BSA"), Public Law 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5332, authorizes the Secretary of the Treasury, inter alia, to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the BSA (codified at 31 U.S.C. 5311 et seq.) appear at 31 CFR Part 103. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

[1] Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (the "USA Patriot Act"), Public Law 107-56.

The Secretary of the Treasury was granted authority in 1992, with the enactment of 31 U.S.C. 5318(g),[2] to require financial institutions to report suspicious transactions. As amended by the USA Patriot Act, subsection (g)(1) states generally:

> The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

Subsection (g)(2)(A) provides further that

> If a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this section or any other authority, reports a suspicious transaction to a government agency –
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> > (i) the financial institution, director, officer, employee, or agent may not notify any person involved in the transaction that the transaction has been reported; and
> >
> > (ii) no officer or employee of the Federal Government or of any State, local, tribal, or territorial government within the United States, who has any knowledge that such report was made may disclose to any person involved in the transaction that the transaction has been reported, other than as necessary to fulfill the official duties of such officer or employee.

Subsection (g)(3)(A) provides that neither a financial institution, nor any director, officer, employee, or agent of any financial institution

> that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this subsection or any other authority . . . shall . . . be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such

[2] 31 U.S.C. 5318(g) was added to the BSA by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act (the "Annunzio-Wylie Anti-Money Laundering Act"), Title XV of the Housing and Community Development Act of 1992, Public Law 102-550; it was expanded by section 403 of the Money Laundering Suppression Act of 1994 (the "Money Laundering Suppression Act"), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103-325, to require designation of a single government recipient for reports of suspicious transactions.

> disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure.

Finally, subsection (g)(4) requires the Secretary of the Treasury, "to the extent practicable and appropriate," to designate "a single officer or agency of the United States to whom such reports shall be made."[3] The designated agency is in turn responsible for referring any report of a suspicious transaction to "any appropriate law enforcement, supervisory agency, or United States intelligence agency for use in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism." Id., at subsection (g)(4)(B).

The provisions of 31 U.S.C. 5318(h), also added to the BSA in 1992 by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, authorize the Secretary of the Treasury "[i]n order to guard against money laundering through financial institutions ... [to] require financial institutions to carry out anti-money laundering programs." 31 U.S.C. 5318(h)(1). Those programs may include "the development of internal policies, procedures, and controls"; "the designation of a compliance officer"; "an ongoing employee training program"; and "an independent audit function to test programs." 31 U.S.C. 5318(h)(A-D). In 1994, Treasury adopted a regulation requiring casinos to implement anti-money laundering programs in accordance with 31 U.S.C. 5318(h).[4]

Section 352 of the USA Patriot Act amended section 5318(h) to mandate compliance programs for all financial institutions defined in 31 U.S.C. 5312(a)(2). Section 352 of the USA Patriot Act became effective April 24, 2002. On April 29, 2002,

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[3] This designation does not preclude the authority of supervisory agencies to require financial institutions to submit other reports to the same agency or another agency "pursuant to any other applicable provision of law." 31 U.S.C. 5318(g)(4)(C).

[4] See 59 FR 61660 (December 1, 1994).

Treasury issued an interim final rule providing that certain financial institutions, including casinos, would be deemed to be in compliance with 31 U.S.C. 5318(h) if they establish and maintain anti-money laundering programs as required by existing FinCEN regulations, or their respective federal regulator or self-regulatory organization.[5] Therefore, a casino or a card club that implements and maintains a compliance program as required by 31 CFR 103.64 will be deemed to be in compliance with the requirements of 31 U.S.C. 5318(h)(1).

II. Application of the Bank Secrecy Act to Casinos and Card Clubs.

With this rule, the Department of the Treasury extends to casinos and card clubs the suspicious transaction reporting regime to which the nation's banks, thrift institutions, credit unions, broker-dealers, and certain money services businesses, including money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks, are already subject. Banks, thrift institutions, and credit unions have been subject to the suspicious transaction reporting requirement since April 1, 1996.[6] Money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks were made subject to the suspicious transaction reporting requirement on March 14, 2000.[7] On July

[5] See 67 FR 21110 and 31 CFR 103.120(d).

[6] The suspicious transaction reporting rule for banks is found at 31 CFR 103.18. In collaboration with FinCEN, the federal bank supervisors (the Board of Governors of the Federal Reserve System ("Federal Reserve"), the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), the Office of Thrift Supervision ("OTS"), and the National Credit Union Administration ("NCUA")) concurrently issued suspicious transaction reporting rules under their own authority. See 12 CFR 208.62 (Federal Reserve); 12 CFR 21.11 (OCC); 12 CFR 353.3 (FDIC); 12 CFR 563.180 (OTS); and 12 CFR 748.1 (NCUA). The bank supervisory agency rules apply to banks, non-depository institution affiliates and subsidiaries of banks and bank holding companies, and bank holding companies.

[7] The suspicious transaction reporting rule for these money services businesses is found at 31 CFR 103.20.

1, 2002, FinCEN published a final rule requiring broker-dealers to file reports of suspicious transactions beginning after December 30, 2002.[8]

State licensed gambling casinos were generally made subject to the BSA as of May 7, 1985, by regulation issued early that year. See 50 FR 5065 (February 6, 1985).[9] Special BSA regulations relating to casinos were issued in 1987, and amended in 1989 and (more significantly) in 1994. See 52 FR 11443 (April 8, 1987), 54 FR 1165 (January 12, 1989), and 59 FR 61660 (December 1, 1994) (modifying and putting into final effect the rule originally published at 58 FR 13538 (March 12, 1993)). These actions reflect the continuing determination not only that casinos are vulnerable to manipulation by money launderers and tax evaders but, more generally, that gaming establishments provide their customers with a financial product -- gaming -- and as a corollary offer a broad array of financial services, such as customer deposit or credit accounts, facilities for transmitting and receiving funds transfers directly from other institutions, and check cashing and currency exchange services, that are similar to those offered by depository institutions and other financial firms.

In recognition of the importance of the application of the BSA to the casino gaming industry, section 409 of the Money Laundering Suppression Act codified the application of the BSA to gaming activities by adding casinos and other gaming establishments to the list of financial institutions specified in the BSA itself. The statutory provision found at 31 U.S.C. 5312(a)(2)(X) reads:

> (2) financial institution means--
>
> ....

[8] See 67 FR 44048. This rule can be found at 31 CFR 103.19.

[9] Casinos whose gross annual gaming revenue do not exceed $1 million were, and continue to be, excluded from Bank Secrecy Act coverage.

> (X) a casino, gambling casino, or gaming establishment with an annual gaming revenue of more than $1,000,000 which--
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> > (i) is licensed as a casino, gambling casino, or gaming establishment under the laws of any State or any political subdivision of any State; or
> >
> > (ii) is an Indian gaming operation conducted under or pursuant to the Indian Gaming Regulatory Act other than an operation which is limited to class I gaming (as defined in section 4(6) of such Act) . . . .

Gambling casinos authorized to do business under the Indian Gaming Regulatory Act became subject to the BSA on August 1, 1996, see 61 FR 7054 (February 23, 1996), and the class of gaming establishments known as "card clubs" became subject to the BSA on August 1, 1998.[10] See 63 FR 1919 (January 13, 1998).

Since May 1985, casinos located in Nevada have been exempt from certain BSA requirements pursuant to a memorandum of agreement between the Treasury Department and the State of Nevada on behalf of Nevada casinos under 31 CFR 103.45(c)(1) (subsequently renumbered as 103.55).[11] By its terms, the memorandum of agreement only exempts Nevada casinos from the BSA requirements applicable to casinos at the time it was signed, including currency transaction reporting and recordkeeping requirements. Therefore, casinos in Nevada must comply with the final rule published in this document.

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[10] Generally card clubs are subject to the same rules as casinos, unless a specific provision of the rules in 31 CFR Part 103 applicable to casinos explicitly requires a different treatment for card clubs. As in the case of casinos, card clubs whose gross annual gaming revenue is $1 million or less are excluded from BSA coverage. See 31 CFR 103.11(n)(8).

[11] 31 CFR 103.55(c)(1) provides that the Secretary of the Treasury may grant exemptions to casinos in any state "whose regulatory system substantially meets the reporting and recordkeeping requirements of this part."

III. Importance of Suspicious Transaction Reporting in Treasury's Counter-Money Laundering Program.

The Congressional authorization of reporting of suspicious transactions recognizes two basic points that are central to Treasury's counter-money laundering and counter-financial crime programs. First, it is to financial institutions that money launderers must go, either initially, to conceal their illegal funds, or eventually, to recycle those funds back into the economy. Second, the employees and officers of those institutions are often more likely than government officials to have a sense as to which transactions appear to lack commercial justification (or in the case of gaming establishments, transactions that appear to lack a reasonable relationship to legitimate wagering activities) or that otherwise cannot be explained as constituting a legitimate use of the casino's financial services.

The importance of extending suspicious transaction reporting to all relevant financial institutions, including non-bank financial institutions, relates to the concentrated scrutiny to which banks have been subject with respect to money laundering. This attention, combined with the cooperation that banks have given to law enforcement agencies and banking regulators to root out money laundering, have made it far more difficult than in the past to pass large amounts of cash directly into the nation's banks unnoticed. As it has become increasingly difficult to launder large amounts of cash through banks, criminals have turned to non-bank financial institutions, including casinos, in attempts to launder funds.[12] Indeed, many non-banks have already recognized

[12] See e.g., United States v. Vanhorn, 2002 U.S.App. LEXIS 14277 (8th Cir. July 16, 2002) (defendant converted illegally-derived money into cash at casino, then deposited it as gambling proceeds into investment account); Unites States v. Bockius, 228

the increased pressure that money launderers have come to place upon their operations and the need for innovative programs of training and monitoring necessary to counter that pressure.

The National Money Laundering Strategy for 2002 (the "2002 Strategy")[13] reaffirms Treasury's commitment, expressed in prior National Money Laundering Strategy reports, to extending to casinos the requirement to report suspicious transactions.[14] As explained in the National Money Laundering Strategy for 1999:

> The attention given to the prevention of money laundering through banks reflects the central role of banking institutions in the global payments system and the global economy. But non-bank financial institutions require attention as well. Money launderers will move their operations to institutions in which their chances of successful evasion of enforcement and regulatory efforts is the highest.[15]

The reporting of suspicious transactions is also recognized as essential to an effective counter-money laundering program in the international consensus on the prevention and detection of money laundering. One of the central recommendations of the Financial Action Task Force Against Money Laundering ("FATF") is that:

> If financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the competent authorities.

F.3d 305 (3rd Cir. 2000) (defendant laundered money by wiring funds to casino, losing some of the money gambling, and taking the remainder of the cash); United States v. Napoli, 179 F.3d 1 (2nd Cir. 1999) (sentencing of defendant convicted of money laundering by depositing funds derived from scheme to defraud cigarette importers into casino account, gambling a portion, then cashing the remainder out).

[13] The 2002 Strategy, published in August 2002, was the fourth in a series of five annual reports called for by the Money Laundering and Financial Crimes Strategy Act of 1998, Public Law 105-310 (October 30, 1998), codified at 31 U.S.C. 5340 et seq. Each annual report is to be submitted to Congress by the President, working through the Secretary of the Treasury in consultation with the Attorney General.

[14] 2002 Strategy, at page 44 ("FinCEN anticipates issuing a final rule [requiring casinos to report suspicious transactions] by December 2002").

[15] 1999 Money Laundering Strategy, at 35-36.

Financial Action Task Force Annual Report (June 28, 1996),[16] Annex 1 (Recommendation 15). The recommendation applies equally to banks and non-banks.[17]

Similarly, the European Community's Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering calls for member states to

> ensure that credit and financial institutions and their directors and employees cooperate fully with the authorities responsible for combating money laundering ... by [in part] informing those authorities, on their own initiative, of any fact which might be an indication of money laundering.

EC Directive, O.J. Eur. Comm. (No. L 166) 77 (1991), Article 6. Accord, the Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Related Offenses of the Organization of American States, OEA/Ser. P. AG/Doc. 2916/92 rev. 1 (May 23, 1992), Article 13, section 2.[18] All of these documents also recognize the importance of extending the counter-money laundering controls to "non-traditional"

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[16] FATF is an inter-governmental body whose purpose is development and promotion of policies to combat money laundering. Originally created by the G-7 nations, its membership now includes Argentina, Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Kingdom of the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States, as well as the European Commission and the Gulf Cooperation Council.

[17] This recommendation revises the original recommendation, issued in 1990, that required institutions to be either "permitted or required" to report. (Emphasis supplied.) The revised recommendation reflects the international consensus that a mandatory suspicious transaction reporting system is essential to an effective national counter-money laundering program and to the success of efforts of financial institutions themselves to prevent and detect the use of their services or facilities by money launderers and others engaged in financial crime.

[18] The Organization of American States ("OAS") reporting requirement is linked to the provision of the Model Regulations that institutions "shall pay special attention to all complex, unusual or large transactions, whether completed or not, and to all unusual patterns of transactions, and to insignificant but periodic transactions, which have no apparent economic or lawful purpose." OAS Model Regulation, Article 13, section 1.

financial institutions, not simply to banks, both to ensure fair competition in the marketplace and to recognize that non-bank providers of financial services as well as depository institutions, are an attractive mechanism for, and are threatened by, money launderers. See, e.g., Financial Action Task Force Annual Report, supra, Annex 1 (Recommendation 8).

IV. Notice of Proposed Rulemaking.

The final rule contained in this document is based on the notice of proposed rulemaking published May 18, 1998 (the "Notice") (63 FR 27230), and the Request for Additional Comments on the nature of the proposed reporting standard published March 29, 2002 (the "Additional Request for Comments") (67 FR 15138). The Notice proposed to require casinos[19] to report suspicious transactions to the Department of the Treasury. The notice also proposed related changes to the provisions of 31 CFR 103.54 (subsequently renumbered as 103.64) relating to casino compliance programs.

Subsequent to issuing the Notice, FinCEN held four public meetings to provide interested parties with the opportunity to present their views with respect to the potential effects of the Notice, as well as to provide FinCEN with additional information and feedback useful in preparing the final rule based on the Notice.[20] FinCEN then made transcripts of these meetings available to requesting parties.

[19] As used hereafter in this document, the phrase "casino" when used singly includes a reference both to casinos and to card clubs, as the latter term is defined in 31 CFR 103.11(n)(6), unless the context clearly indicates otherwise. See 31 CFR 103.11(n)(5)(iii). 31 CFR 103.11(n)(5)(iii) and (n)(6) were added to the BSA regulations by final rule published at 63 FR 1919 (January 13, 1998).

[20] These public meetings were held in New Orleans, Louisiana, on July 14, 1998; Chicago, Illinois, on July 23, 1998; Scottsdale, Arizona, on August 6, 1998; and New York City, New York, on September 9, 1998.

The comment period for the Notice ended on September 15, 1998. FinCEN received a total of eighteen comment letters. Of these, 5 were submitted by casinos, 4 by casino trade associations, 4 by agencies representing state or tribal governments, 2 by casino consulting services, 1 by several members of the New Jersey Congressional delegation, 1 by an agency of the United States Government, and 1 by a law firm. The comment period for the Request for Additional Comments ended on May 28, 2002. FinCEN received a total of fourteen letters. Of these, 4 were submitted by casino trade associations, 3 by agencies representing state or tribal governments, 2 by casinos, 3 by members of the United States Congress, 1 by a card club, and 1 by a law firm representing several tribal governments.

V. Summary of Comments and Revisions.

A. Introduction.

The format of the final rule is generally consistent with the format of the rule proposed in the Notice. The terms of the final rule, however, differ from the terms of the Notice in the following significant respects:

- The dollar threshold for reporting suspicious transactions has been raised from $3,000 to $5,000;
- A fourth category of reportable activity has been added to the rule, to clarify that all violations of law, other than those specifically exempted by the rule, are within the scope of required reporting;
- An exception from reporting relating to robbery or burglary has been added to the rule;

- The language requiring casinos annually to conduct independent testing of their compliance programs has been revised to permit casinos to determine the scope and frequency of such review based on an evaluation by the casino of money laundering risks posed by the casino's operations;
- The language requiring casinos annually to prepare a statement relating to the effectiveness of the casino's internal controls and procedures has been deleted; and
- The language requiring casinos to incorporate into their compliance programs procedures for using all available information to determine the occurrence of suspicious transactions has been revised.

B. Comments on the Notice -- Overview and General Issues.

Comments on the Notice concentrated on three matters: (i) the proposed $3,000 threshold for reporting suspicious transactions; (ii) the proposed reporting standard requiring casinos to report suspicious transactions when they have "reason to suspect" that a transaction requires reporting under the terms of the rule; and (iii) the meaning of the term "suspicious" in the context of gaming.

1. Dollar Threshold for Reporting.

FinCEN received several comments concerning the establishment of the proper dollar threshold for reporting suspicious transactions. The majority of commenters on this subject argued that the proposed $3,000 threshold was too low and urged that it be raised to at least $5,000, the suspicious transaction reporting threshold applicable to banks. In response to these comments, the final rule increases the dollar threshold for reporting suspicious transactions to $5,000. Adoption of this reporting threshold is

intended to reduce the burden of reporting while at the same time ensuring collection of reports of suspicious transactions that are significant for law enforcement purposes.

FinCEN wishes to emphasize that the rule is not intended to require casinos mechanically to review every transaction that exceeds the reporting threshold. Rather, it is intended that casinos, like every type of financial institution to which the suspicious transaction reporting rules of 31 CFR Part 103 apply, will evaluate customer activity and relationships for money laundering risks, and design a suspicious transaction monitoring program that is appropriate for the particular casino in light of such risks. In other words, it is expected that casinos will follow a risk-based approach in monitoring for suspicious transactions, and will report all detected suspicious transactions that involve $5,000 or more in funds or other assets. A well-implemented anti-money laundering compliance program should reinforce a casino's efforts in detecting suspicious activity. In addition, casinos are encouraged to report on a voluntary basis detected suspicious transactions that fall below the $5,000 reporting threshold, such as the submission by a customer of an identification document that the casino suspects is false or altered, in the course of a transaction that triggers an identification requirement under the Bank Secrecy Act or other law.

2. Standard for Reporting.

Paragraph (a)(2) requires reporting if a casino "knows, suspects, or has reason to suspect" that a transaction requires reporting under the rule.[21] Commenters on the Notice and on the Request for Additional Comments raised several objections to inclusion in the

[21] Because the standard requires reporting when a financial institution has "reason to suspect" that a transaction is suspicious, the standard is referred to in the comments and in this document as an "objective reporting standard."

rule of an objective reporting standard. First, commenters argued that the "fast-paced, entertainment-filled environment" at casinos makes implementation of an objective reporting standard overly burdensome. Commenters asserted that, although the objective reporting standard may be appropriate in the context of the environment found at banks, casinos would find it difficult to discern whether a transaction is unusual for a particular customer or lacks a legitimate business purpose. Commenters also argued that, under an objective reporting standard, casinos would likely find it necessary to document their reasons for not filing a suspicious activity report with respect to a particular transaction that meets the reporting threshold, or even to report all transactions that exceed the reporting threshold, whether or not suspicious. Some commenters suggested adding language to the rule specifically discussing a casino's obligation to exercise due diligence in the detection and reporting of suspicious activities. One commenter argued however, that even adding specific due diligence language to the text of the rule would not protect casinos from after the fact second-guessing by examiners.

FinCEN has determined that the "has reason to suspect" language, which is contained in all of the existing BSA suspicious transaction reporting rules, including those for depository institutions, broker-dealers, and certain money services businesses, should be retained because it is necessary to the imposition of a due diligence requirement on reporting entities. This does not mean, however, that casinos will be subjected to unfair second-guessing of their efforts in detecting and reporting suspicious activity. Rather, the standard incorporates well-recognized and objective due diligence concepts. As FinCEN explained in the Additional Request for Comments, the "reason to suspect" standard means that, on the facts existing at the time, a reasonable casino in

similar circumstances would have suspected the transaction was subject to suspicious transaction reporting. This is a flexible standard that recognizes the variation in operating realities within a casino (for example, the differences between a casino cage and the gaming floor), among various types of casinos, and among various types of financial institutions generally. This reporting standard is complementary to language found in the requirement that casinos implement BSA compliance programs. Under 31 CFR 103.64, casinos are required to develop and implement a program "reasonably designed to assure and monitor compliance" with the requirements of the BSA, including the requirement to report suspicious transactions under the final rule. (Emphasis supplied.) For all of these reasons, FinCEN believes that it is appropriate to require all financial institutions to which suspicious activity reporting rules under the BSA have been extended to meet the "has reason to suspect" standard.

3. Meaning of "Suspicious" in the Context of Gaming Activity.

Several commenters argued that the term "suspicious" is vague, and suggested that further definition of the term is necessary in order to help casinos identify those transactions that should be reported under the rule, and to avoid liability for failure to file a report in situations in which it is unclear whether a report is warranted. Commenters expressed concern that, if a specific definition for the term "suspicious" is not added to the rule, casinos will risk penalties in situations in which casinos and examiners disagree about what type of activity should be deemed suspicious.

FinCEN believes that to craft a more specific definition of the term "suspicious" would result in a rigid, automatic approach to suspicious transaction reporting. As noted above, a critical aspect of suspicious transaction reporting is that it enables law

enforcement to benefit from the expertise of financial institution employees and officers in judging which transactions are suspicious in the context of the particular financial services offered by the financial institution. Each casino must be able to recognize the sorts of transactions that may require additional scrutiny and at the same time understand that not all such transactions are reportable if a reasonable explanation for the circumstances of a particular transaction arises upon such examination. It is a common characteristic of money launderers that they seek to do for illegitimate purposes what others do for legitimate purposes. Thus, the rule does not contain a specific definition of "suspicious" or a list of potentially suspicious transactions. However, FinCEN intends, when appropriate, to provide guidance to assist the casino industry in identifying transactions that may be indicative of illegal activity. For example, in August 2000, FinCEN published a guidance document (a "SAR Bulletin") based on a review of suspicious activity reports filed by casinos, indicating the use of wire transfers and cashier's checks to deposit funds into casino accounts, used for little or no gaming activity, and then cashed out. Such guidance materials will be made available on FinCEN's website, www.treas.gov/fincen.

Several commenters criticized the guidance document that FinCEN published in July 1998 entitled "Suspicious Activity Reporting and Casinos," which provided examples of potentially suspicious casino transactions and was intended to be illustrative only. Addressing that guidance document is beyond the scope of this rulemaking. However, FinCEN intends to provide revised and updated guidance with input from law enforcement, regulators, and the casino industry to ensure that the guidance provided is timely, relevant, and useful.

VI. Section-by-Section Analysis.

A. 103.11(ii) – Transaction.

The final rule amends the definition of "transaction" in the BSA regulations, 31 CFR 103.11(ii), explicitly to include the purchase or redemption of casino chips or tokens, or other gaming instruments. This change is designed to clarify that the definition applies to transactions relating to gaming activity.

B. 103.21(a) -- General.

Paragraph 103.21(a)(1) generally sets forth the requirement that casinos report suspicious transactions to the Department of the Treasury. The paragraph also permits, but does not require, a casino voluntarily to file a suspicious transaction report in situations in which mandatory reporting is not required. The rule itself does not contain a separate reference to card clubs, given that, as noted above, 31 CFR 103.11(n)(5)(iii) generally provides that "[a]ny reference in [31 CFR part 103] ... to a casino shall also include a reference to a card club, unless the provision in question contains specific language varying its application to card clubs or excluding card clubs from its application." The final rule only applies to entities that fall within the definitions of "casino"[22] and "card club"[23] found in 31 CFR Part 103. It should be noted that each definition contains a gross annual gaming revenue threshold of $1,000,000.

Paragraph (a)(2) provides that a transaction requires reporting under the rule if it is conducted or attempted by, at, or through a casino, involves or aggregates at least $5,000 in funds or other assets, and the casino knows, suspects, or has reason to suspect that the transaction falls within one of four categories of transactions. Thus, transactions

[22] See 31 CFR 103.11(n)(5)(i).

require reporting under the final rule whether or not they involve currency. This is the approach that FinCEN has taken with respect to all BSA suspicious transaction reporting rules.

1. Dollar Threshold for Reporting. The final rule requires reporting of suspicious transactions that involve or aggregate at least $5,000. Several commenters suggested eliminating the requirement to file a suspicious transaction report on related suspicious transactions that, when aggregated, total at least $5,000. Commenters argued that to require casinos to aggregate transactions would be overly burdensome. However, the intent of the rule is to capture both individual suspicious transactions that meet the reporting threshold, as well as multiple transactions detected by a casino that are related (either because they were conducted by the same person, or because they were conducted by individuals working together) that, when combined, reach the $5,000 reporting threshold. To enable criminals to evade reporting simply by breaking up suspicious transactions would significantly weaken the rule's effect. A casino's compliance system should be designed to capture suspicious activity in the aggregate.

2. Reporting Standard. Paragraph (a)(2) requires reporting if a casino "knows, suspects, or has reason to suspect" that a transaction requires reporting under the rule. As explained above, this reporting standard incorporates a concept of due diligence into the reporting requirement.

3. Scope of Reporting. Paragraph (a)(2) contains four categories of reportable transactions. The first three reporting categories are identical to those contained in the Notice. The first category, described in paragraph (a)(2)(i), includes transactions

[23] See 31 CFR 103.11(n)(6)(i).

involving funds derived from illegal activity or intended or conducted to hide or disguise funds or assets derived from illegal activity. The second category, described in paragraph (a)(2)(ii), involves transactions designed, whether through structuring or other means, to evade the requirements of the BSA. The third category, described in paragraph (a)(2)(iii), involves transactions that appear to serve no business or apparent lawful purpose or are not the sort of transactions in which the particular customer would be expected to engage, and for which the casino knows of no reasonable explanation after examining the available facts. A number of commenters opposed the reporting of transactions that could not definitively be linked to wrongdoing. Commenters argued that customers in a casino cannot be relied upon to act in ways consistent with any particular norm of financial transaction, but may be motivated by, for example, gambling superstitions. However, FinCEN believes that a suspicious transaction reporting rule must include a requirement for the reporting of transactions that vary so substantially from normal practice that they legitimately can and should raise suspicions of possible illegality in the mind of a reasonable casino employee. Unlike many criminal acts, money laundering involves the taking of apparently lawful steps for an unlawful purpose. A skillful money launderer will often split the movement of funds between several institutions so that no one institution can have a complete picture of the transactions or funds movement involved. Thus, the reporting of transactions that are unusual for a gaming customer generally, or for a particular customer, is an important element of suspicious transaction reporting.

Commenters also urged FinCEN to remove the language in the rule requiring casinos to report transactions that have "no business or apparent lawful purpose"

(emphasis added). Commenters argued that many casino patrons do not have a business purpose for the transactions they conduct at casinos; rather, casino customers conduct transactions for entertainment/gaming purposes and for this reason, such language is inappropriate for a suspicious transaction reporting rule applicable to casinos. This suggestion has not been adopted. Casinos do conduct many types of transactions that resemble those conducted at traditional financial institutions. For example, a customer at a casino cage can initiate or receive funds transfers, open and settle deposit and credit accounts, and purchase and cash checks. Moreover, the simple fact that a customer is not motivated by a business purpose in conducting a transaction that is otherwise not suspicious would not trigger the requirement to report under the rule.

The final rule contains a fourth reporting category, described in paragraph (a)(2)(iv), involving the use of the casino to facilitate criminal activity.[24] The addition of a fourth category of reportable transactions to the rule is intended to ensure that transactions involving legally-derived funds that the casino suspects are being used for a criminal purpose, such as terrorist financing, are reported under the rule. The addition of this reporting category is not intended to effect a substantive change in the rule. Such transactions should be reported under the broad language contained in the third reporting category, requiring the reporting of transactions with "no business or apparent lawful purpose." FinCEN believes that this broad language should be interpreted to require the reporting of transactions that appear linked to any form of criminal activity.

[24] Although the fourth reporting category does not appear in FinCEN's suspicious activity reporting rules for banks and money services businesses, identical language appears in FinCEN's suspicious activity reporting rule for broker-dealers found at 31 CFR 103.19, while similar language appears in the banking regulatory agencies' suspicious transaction reporting rules for depository institutions promulgated under Title

Nevertheless, the fourth category has been added to make explicit that transactions being carried out for the purpose of conducting illegal activities, whether or not funded from illegal activities, must be reported under the rule. It should be noted that, in determining whether transactions are required to be reported under the third or fourth reporting categories of the rule, casinos are not expected to have expert knowledge of what constitutes a violation of each state or federal criminal law. Rather, it is intended that casinos will report transactions that appear, for whatever reason, to be conducted for an unlawful purpose.

Several commenters indicated that the rule seems to require casinos to deem each transaction as suspicious until proven otherwise, and to retain documentation describing why the casino has determined that each transaction exceeding the reporting threshold for which a suspicious transaction report has not been filed is not suspicious. However, the rule does not require this level of review and documentation. Rather, as explained above, casinos are expected to evaluate customer activity in light of the casino's relationship with the customer, and knowledge of customer activity in general. This is emphasized by the compliance program requirement for casinos found at 31 CFR 103.64, which requires casinos to develop and implement a written program "reasonably designed to assure and monitor compliance with" the BSA and its implementing regulations. (Emphasis added.)

C. 103.21(b) –- Filing Procedures.

Paragraph (b) continues to set forth the filing procedures to be followed by casinos making reports of suspicious transactions. Within 30 days after a casino becomes aware of a suspicious transaction, the casino must report the transaction by completing a

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12.

Form TD F 90-22.49, Suspicious Activity Reporting by Casinos ("SARC") and filing it in a central location, to be determined by FinCEN. Special provision is made for situations requiring immediate attention (e.g., where delay in reporting might hinder law enforcement's ability to fully investigate the activity), in which case casinos are immediately to notify, by telephone, the appropriate law enforcement authority in addition to filing a SARC. In addition, casinos may wish to contact FinCEN's Financial Institutions Hotline (1-866-556-3974), for use by financial institutions wishing voluntarily to report to law enforcement suspicious transactions that may relate to terrorist activity. Casinos reporting suspicious activity by calling the Financial Institutions Hotline must still file a timely SARC to the extent required by the final rule. Published for comment elsewhere in this issue of the Federal Register is a revised SARC designed for use by the casino industry as a whole, and incorporating the terms of the final rule.

If a casino is unable to identify a suspect on the date the suspicious transaction is initially detected, the rule provides the casino with an additional 30 calendar days to identify the suspect before filing a SARC, but the suspicious transaction must be reported within 60 calendar days after the date of initial detection of the suspicious transaction, whether or not the casino is able to identify a suspect. Commenters requested clarification on the extent to which a casino must attempt to obtain customer identification for purposes of completing a SARC. Commenters argued that casinos often deal with customers with whom they are not familiar. The final rule does not require a casino to alter its relationship with its customers in a way that is inconsistent with industry practice. As a result, FinCEN anticipates receiving a certain number of

SARCs that do not contain detailed customer identifying information. However, casinos must ensure that their BSA compliance programs include procedures for using all available information to determine and verify a customer's identification for purposes of satisfying a casino's reporting and recordkeeping requirements under the BSA.[25]

D. 103.21(c) – Exceptions.

In response to comments, paragraph (c) provides that a casino is not required to report under the final rule a robbery or burglary that the casino reports to an appropriate law enforcement authority.

E. 103.21(d) –- Retention of Records.

Paragraph (d) continues to provide that casinos must maintain copies of the SARCs they file and the original related documentation (or business record equivalent) for a period of five years from the date of filing. Supporting documentation is to be made available to FinCEN, and any other appropriate law enforcement agencies, or federal, state, local, or tribal gaming regulators, upon request.

F. 103.21(e) –- Confidentiality of Reports; Limitation of Liability.

Paragraph (e) continues to incorporate the terms of 31 U.S.C. 5318(g)(2) and (g)(3). Thus, this paragraph specifically prohibits persons filing reports in compliance with the final rule (or voluntary reports of suspicious transactions) from disclosing, except to appropriate law enforcement and regulatory agencies, that a report has been prepared or filed. The paragraph also restates the broad protection from liability for making reports of suspicious transactions (whether such reports are required by the final rule or made voluntarily), and for failure to disclose the fact of such reporting, contained

[25] See 31 CFR 103.64(a)(2)(v)(A).

in the statute as amended by the USA Patriot Act. The regulatory provisions do not extend the scope of either the statutory prohibition or the statutory protection; however, because FinCEN recognizes the importance of these statutory provisions in the overall effort to encourage meaningful reports of suspicious transactions and to protect the legitimate privacy expectations of those who may be named in such reports, they are repeated in the rule to remind compliance officers and others of their existence.

G. Compliance.

Paragraph (f) continues to note that compliance with the obligation to report suspicious transactions will be audited, and provides that failure to comply with the rule may constitute a violation of the BSA and the BSA regulations, which may subject non-complying casinos to an enforcement action under the BSA.

H. 103.21(g)--Effective Date.

Paragraph (g) provides a 180-day period before which compliance with the suspicious transaction reporting rule will become mandatory.

I. 103.64 -- Related changes to casino compliance program requirements.

General. As noted above, the suspicious transaction reporting rule is complemented by the compliance program requirement for casinos found at 31 CFR 103.64. (This requirement previously appeared at 31 CFR 103.54.) Prior to enactment of section 352 of the USA Patriot Act requiring all financial institutions to develop and implement anti-money laundering compliance programs, only casinos had been subject to a compliance program requirement under Title 31 of the United States Code. However, in response to the mandate of the USA Patriot Act, FinCEN has begun promulgating compliance program requirements for additional financial institutions, including money

services businesses, mutual funds, and operators of credit card systems.[26] Thus, FinCEN has determined to revise the proposed changes to the casino compliance program requirement contained in the Notice in a manner consistent with the compliance program requirements promulgated under the USA Patriot Act.

a. Testing for compliance. 31 CFR 103.64(a)(2)(ii) requires that casino compliance programs include "[i]nternal and/or external independent testing for compliance." The Notice proposed modifying the requirement so that the necessary testing (i) would be required to occur at least annually, and (ii) would include a specific determination whether programs at the casino are working effectively to ensure that suspicious transactions, and currency transactions of more than $10,000, are detected and reported, and the casino is able properly to comply with recordkeeping and compliance program standards. However, 31 U.S.C. 5318(h) as amended by section 352 of the USA Patriot Act does not specify the frequency with which the required independent testing must be conducted, and in promulgating compliance program requirements pursuant to the USA Patriot Act, FinCEN has not required annual testing. Rather, the recently published anti-money laundering compliance program requirements for money services businesses and operators of credit card systems provide that the scope and frequency of testing must be commensurate with the risks posed by the products and services offered by the financial institutions to which they apply, and the manner in which such products and services are offered. FinCEN has determined that casinos too should be permitted to conduct their own risk-based analyses to determine the scope and frequency with which the independent testing required under the rule must take place. Therefore, the final rule

[26] See 67 FR 21114, 21117, and 21121 (April 29, 2002).

provides that the scope and frequency of review of a casino's compliance program "shall be commensurate with the money laundering and terrorist financing risks posed by the products and services provided by the casino."

b. Occurrence or patterns of suspicious transactions. 31 CFR 103.64(a)(2)(v)(B) requires casinos to maintain procedures to determine "[w]hen required by [31 CFR Part 103] the occurrence of unusual or suspicious transactions." The Notice proposed revising the rule to make clear that the necessary procedures extend to analysis not only of customer accounts but also of the casino's own records derived from or used to record, track, or monitor casino activity. However, some commenters expressed concern that the proposed language would require a casino to screen retrospectively all transactions in order to monitor for suspicious activity. Given that the rule already requires casinos to implement "procedures for using all available information" to determine customer identification, the occurrence of suspicious transactions, and whether a record must be made and retained, and that casinos that have automated data processing systems must use them to aid in assuring compliance, the final rule does not adopt the language contained in the Notice. Instead, the provision has been revised to reflect implementation of the final rule requiring casinos to report suspicious transactions.

VII. Executive Order 12866.

The Department of the Treasury has determined that this rulemaking is not a significant regulatory action under Executive Order 12866.

VIII. Regulatory Flexibility Act.

FinCEN certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The BSA authorizes Treasury to require

financial institutions to report suspicious activities. 31 U.S.C. 5313(g). However, the BSA excludes casinos or gaming establishments with annual gaming revenue not exceeding $1 million from the definition of "financial institution." 31 U.S.C. 5312(a)(2)(X). Thus, certain small casinos and card clubs are excluded by statute from the operation of the final rule. Other casinos, namely those in Colorado and South Dakota, are subject to state law limitations on the size of wagers that may be made at those casinos. In casinos such as these, the burden to establish procedures to detect suspicious activity should be substantially reduced since the low dollar amount of the limits makes it unlikely that customers would engage in transactions at these casinos large enough to trigger a reporting requirement under the final rule.

As to the remaining casinos and card clubs, many of the requirements of the final regulation may be satisfied, in large part, using existing business practices and records. For example, many casinos already obtain a great deal of data about their customers from information routinely collected from casino established deposit, credit, check cashing, and player rating accounts. This existing data can assist casinos in making decisions about whether a transaction is suspicious. Many casinos also already have policies and procedures in place and have trained personnel to detect unusual or suspicious transactions, as part of their own risk prevention programs. In addition, it is common in the casino industry to perform annual, and in some cases quarterly, testing of compliance programs. Further, a number of casinos have already begun voluntarily reporting suspicious transactions to Treasury.

In drafting the rule, FinCEN carefully considered the importance of suspicious transaction reporting to the administration of the BSA. Congress considers suspicious

transaction reporting a "key ingredient in the anti-money laundering effort."[27] Moreover, the legislative history of the BSA demonstrates that money launderers will shift their activities away from more regulated to less regulated financial institutions.[28] Finally, there is no alternative mechanism for the government to obtain this information other than by requiring casinos and card clubs to set up procedures to detect and report suspicious activity.

IX. Paperwork Reduction Act Notice.

The collection of information contained in this final regulation has been approved by the Office of Management and Budget ("OMB") in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1506-0006. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information in this final rule is in 31 CFR 103.21(b)(3) and (d). This information is required to be provided pursuant to 31 U.S.C. 5318(g) and 31 CFR 103.21. This information will be used by law enforcement agencies in the enforcement of criminal and regulatory laws. The collection of information is mandatory. The likely recordkeepers are businesses.

The estimated average recordkeeping burden associated with the collection of information in this final rule is four hours per recordkeeper. The estimated average recordkeeping burden contained in the Notice was three hours. FinCEN received some comments during the comment period requesting that the burden estimate should better

[27] H.R. Rep. No. 438, 103d Cong., 2d Sess. 15 (1994).

reflect the amount of time involved in analyzing whether transactions require reporting under the rule. Although, to a certain extent, such comments were based on a misunderstanding of the requirements of the rule that FinCEN subsequently clarified through publication of Request for Additional Comments, the burden estimate has been revised to address commenters' concerns. The burden estimate relates to the recordkeeping requirement contained in the final rule. The reporting burden of 31 CFR 103.21 will be reflected in the burden of the SARC form. FinCEN anticipates that the final rule will result in an annual filing of a total of 3000 SARCs. This result is an estimate, based on a projection of the size and volume of the industry.

Comments concerning the accuracy of this burden estimate should be directed to the Financial Crimes Enforcement Network, Department of the Treasury, Post Office Box 39, Vienna, VA 22183, and to the Office of Management and Budget, Attn: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks, Banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons set forth above in the preamble, 31 CFR Part 103 is amended as follows:

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[28] "It is indisputable that as banks have been more active in prevention and detection on money laundering, money launderers have turned in droves to the financial services offered by a variety of [non-bank financial institutions]." Id., at 19.

PART 103 -- FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5332; title III, secs. 314, 352, Pub. L. 107-56, 115 Stat. 307.

2. Amend § 103.11 as follows:

a. The first sentence of paragraph (n)(5)(ii) is amended by removing "(i)(7)" adding "(n)(5)" in its place.

b. In paragraph (n)(5)(iii), the references "(n)(7)" and "(n)(8)" are revised to read "(n)(5)" and "(n)(6)" respectively.

c. The third sentence of paragraph (n)(6)(i) is amended by removing "(n)(7)(iii)" and adding "(n)(5)(iii)" in its place.

d. The first sentence of paragraph (n)(6)(ii) is amended by removing "(n)(8)" and adding "(n)(6)" in its place.

e. Paragraph (ii)(1) is revised to read as follows:

§ 103.11 Meaning of terms.

* * * * *

(ii) Transaction. (1) Except as provided in paragraph (ii)(2) of this section, transaction means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or security, purchase or redemption of any money order, payment or order for any money remittance

or transfer, purchase or redemption of casino chips or tokens, or other gaming instruments, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

* * * * *

3. In Subpart B, add new § 103.21 to read as follows:

§ 103.21 Reports by casinos of suspicious transactions.

(a) General. (1) Every casino shall file with FinCEN, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A casino may also file with FinCEN, by using the form specified in paragraph (b)(1) of this section, or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a casino, and involves or aggregates at least $5,000 in funds or other assets, and the casino knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy

Act, Public Law 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5332;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the casino knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the casino to facilitate criminal activity.

(b) Filing procedures--(1) What to file. A suspicious transaction shall be reported by completing a Suspicious Activity Report by Casinos ("SARC"), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) Where to file. The SARC shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SARC.

(3) When to file. A SARC shall be filed no later than 30 calendar days after the date of the initial detection by the casino of facts that may constitute a basis for filing a SARC under this section. If no suspect is identified on the date of such initial detection, a casino may delay filing a SARC for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations involving violations that require immediate attention, such as ongoing money laundering schemes, the casino shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SARC. Casinos wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1-866-556-3974 in addition to filing timely a SARC if required by this section.

(c) Exceptions. A casino is not required to file a SARC for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities.

(d) Retention of records. A casino shall maintain a copy of any SARC filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SARC. Supporting documentation shall be identified as such and maintained by the casino, and shall be deemed to have been filed with the SARC. A casino shall make all supporting documentation available to FinCEN, any other appropriate law enforcement agencies or federal, state, local, or tribal gaming regulators upon request.

(e) Confidentiality of reports; limitation of liability. No casino, and no director, officer, employee, or agent of any casino, who reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported. Thus, any person subpoenaed or otherwise requested to disclose a SARC or the information contained in a SARC, except where such disclosure is requested by FinCEN or another appropriate law enforcement or regulatory agency, shall decline to produce the SARC or to provide any information that would disclose that a SARC has been prepared or filed, citing this paragraph (e) and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto. A casino, and any director, officer, employee, or agent of such casino, that makes a report pursuant to this section (whether such report is required by this section or made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of, such report, or both, to the extent provided by 31 U.S.C. 5318(g)(3).

(f) Compliance. Compliance with this section shall be audited by the Department of the Treasury, through FinCEN or its delegees, under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this part.

(g) Effective date. This section applies to transactions occurring after [INSERT DATE 180 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

4. Section 103.64 is amended by:

a. Revising paragraph (a)(2)(ii),

b. Removing the word "hereafter" in paragraph (a)(2)(iii); and

c. Revising paragraph (a)(2)(v)(B).

The revised paragraphs read as follows:

103.64 Special rules for casinos.

(a) Compliance programs. * * *

(2) * * *

(ii) Internal and/or external independent testing for compliance. The scope and frequency of the testing shall be commensurate with the money laundering and terrorist financing risks posed by the products and services provided by the casino;

* * * * *

(v) * * *

(B) The occurrence of any transactions or patterns of transactions required to be reported pursuant to § 103.21;

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Dated: _____

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James F. Sloan
Director,
Financial Crimes Enforcement Network